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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,549	07/02/2003	Marie Johansson	7157-00	3609
23909	7590	04/06/2006		
			EXAMINER	
			YU, GINA C	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/612,549	JOHANSSON ET AL.
	Examiner	Art Unit
	Gina C. Yu	1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 December 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 6-29 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 6-29 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Receipt is acknowledged of amendment filed on December 15, 2005. Claims 6-29 are pending. Claim rejection made under 35 U.S.C. § 112, second paragraph, and § 102 (b), as indicated in the previous Office action, are withdrawn in view of claim cancellation. New rejections are made to address the new claims.

Claim Objections

Claims 10, 25, and 12 are objected to because of the following informalities: Typographical errors are found in claim 10, the conjunction "and [sic]" and in claim 25, the term "myristyl myristate [sic]". In claim 12, lines 3 and 4, commas are misplaced. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-16 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Laden et al. (WO 01/85103 A) as evidenced by Flick (Cosmetic Additives: An Industrial Guide, 1991).

Laden et al. disclose anhydrous skin cleansers comprising water-immiscible emollient oil; oil-gelling agent; and emulsifying agent that forms an emulsion in situ on the skin when the skin cleanser is contacted. See abstract. The reference teaches that the skin cleanser gels form emulsions in situ on the skin during use that can be

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removed from the skin with water. See instant claim 6. The emollient oils of instant claims 7-14 and 18, including paraffin oil, petroleum jelly, lanolin oil, fish oils, sweet almond oils, palm oil, avocado oil, soybean oil, sunflower oil, coconut oil, jojoba oil, dimethicone, isopropyl myristate, isopropyl palmitate, octyl stearate, isooctyl stearate, decyl oleate are disclosed in p. 7, line 11 – p. 8, line 13. The emulsifying agents of instant claim 16 are disclosed in p. 11, lines 1 –18. The oil-gelling agents of instant claims 27 5 are taught in p. 8, line 14 – p. 9, line 7. Example 1 also discloses a specific formula comprising glyceryl stearate and PEG-100 stearate (emulsifier), mineral oil (emollient), and fumed silica (oily gelling agent). See also Examples 2-10.

While Laden et al. do not explicitly disclose linoleic acid, myristic acid, palmitic acid, and stearic acid as recited by present claim 15, these fatty acids are inherently present in vegetable oils, particularly in almond oil and avocado oil. See Flick, p. 215.

Claims 6-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Zabotto et al. (US 4673526) as evidenced by Flick (Cosmetic Additives: An Industrial Guide, 1991).

Zabotto et al. disclose anhydrous skin cleansing composition comprising an oil phase and an emulsifying agent. See abstract. Example 5 teaches a formulation comprising HOSTAPHAT KW, the esters of phosphoric acid and ethoxylated fatty acids, petroleum jelly and ozokerite wax. See col. 2, line 31 – col. 3, line 62. See instant claims 6, 17-19. The oils of instant claims 7-14, including purcellin oil, sweet almond oil, avocado oil, dimethylpolysiloxane, etc., are disclosed in col. 2, lines 35 – 54. The

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waxes of instant claims 17-26 are disclosed in col. 2, line 61 – col. 3, line 28. The emulsifiers of instant claim 16 are also disclosed in col. 3, lines 43 – 62.

While Zabotto et al. do not explicitly disclose linoleic acid, myristic acid, palmitic acid, and stearic acid as recited by present claim 15, these fatty acids are inherently present in the vegetable oils that are disclosed in the prior art, particularly in almond oil and avocado oil. See Flick, p. 215.

Response to Arguments

Applicant's arguments filed on December 15, 2005 have been fully considered but they are not persuasive.

Applicants assert that the limitation of claim 6, c) now requires both a wax and an oil-gelling agent that is both water and oil insoluble. The limitation in the new claim is still in the form of Markush group and does not require both wax and oil gelling agent in the composition.

Applicants also traverse the rejection made in view of Zabotto on the ground that the present claims do not recite abrasive material, which is an essential component of the prior art. Examiner respectfully notes that the present claims recite the transitional phrase "comprising" in describing the limitation of the components of the instant composition. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See Mars Inc. v. H.J. Heinz Co., 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004). See also MPEP § 2111.03.

In this case, the present invention as currently claimed is interpreted as a composition necessarily containing the recited components *and* any other components that are unrecited there.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

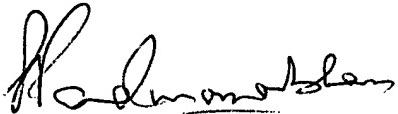
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 9:00 AM until 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu
Patent Examiner



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER